

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRISTOPHER ALAN F.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

CASE NO. 3:22-CV-5289-DWC

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of Defendant's denial of his application for supplemental security income ("SSI").¹ After considering the record, the Court concludes the Administrative Law Judge ("ALJ") erred when he failed to provide a legally sufficient reason for finding the opinions of Mr. Gregory Lease, M.A., Dr. Eugene Kester, M.D., and Dr. Edward Beaty, Ph.D. unpersuasive. Had the ALJ properly considered these three opinions, Plaintiff's residual functional capacity ("RFC") may

¹ Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 3.

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1 have included additional limitations. The ALJ's errors are, therefore, not harmless, and this
 2 matter is reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) to the
 3 Commissioner of Social Security ("Commissioner") for further proceedings consistent with this
 4 Order.

5 **I. Factual and Procedural History**

6 On June 29, 2018, Plaintiff filed an application for SSI benefits, alleging disability
 7 beginning February 2, 2006. *See* Dkt. 8, Administrative Record ("AR") 20. The application was
 8 denied on initial administrative review and reconsideration. *See* AR 20. A hearing was held
 9 before ALJ Lawrence Lee on December 5, 2019. *See* AR 46-60. At the hearing, Plaintiff
 10 amended his alleged onset date to June 29, 2018. AR 50. The ALJ determined Plaintiff was not
 11 disabled. AR 12-32. The Appeals Council denied Plaintiff's administrative appeal, making the
 12 ALJ's decision the final decision of the Commissioner. *See* AR 1-6, 20 C.F.R. §§ 404.981,
 13 416.1481. Plaintiff appealed to the United States District Court for the Western District of
 14 Washington ("District Court"), which remanded the case for further proceedings. *See* AR 785-
 15 96; *Christopher F. v. Commissioner of Social Security*, 3:20-CV-5286-MLP (W.D. Wash. Nov.
 16 30, 2020).

17 On remand, Plaintiff received another hearing and supplemental hearing before the ALJ
 18 and was again found not disabled on February 25, 2022. *See* AR 724-34, 735-51, 805-823.
 19 Plaintiff did not file written exceptions with the Appeals Council, making the February 2022
 20 decision the final decision of the Commissioner. *See* AR 802-04. Plaintiff now appeals the ALJ's
 21 February 2022 decision.²

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 23
 24 ² When stating "the ALJ's decision" throughout this Order, the Court is referring to the February 2022
 decision.

Plaintiff maintains the ALJ erred by finding the opinions of Mr. Gregory Lease, M.A., Dr. Eugene Kester, M.D., and Dr. Edward Beaty, Ph.D. unpersuasive. Dkt. 10 at 1. Plaintiff requests this matter be remanded to the Administration. *Id.*

II. Standard of Review

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of social security benefits if the ALJ’s findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (citations omitted). “We review only the reasons provided by the ALJ in the disability determination and may not affirm the ALJ on a ground upon which he did not rely.” *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014) (citation omitted).

III. Discussion

Plaintiff contends the ALJ erred in finding Mr. Lease’s, Dr. Kester’s, and Dr. Beaty’s opinions unpersuasive. Dkt. 10.

A. Legal Standard

The regulations regarding the evaluation of medical opinion evidence have been amended for claims filed on or after March 27, 2017. *Revisions to Rules Regarding the Evaluation of Medical Evidence* (“*Revisions to Rules*”), 2017 WL 168819, 82 Fed. Reg. 5844, at *5867-68; *5878-79 (Jan. 18, 2017). Since Plaintiff filed his claim after that date, the new regulations apply. See 20 C.F.R. §§ 404.1520c, 416.920c. Under the revised regulations, ALJs “will not defer or give any specific evidentiary weight, including controlling weight, to any medical

1 opinion(s) or prior administrative medical finding(s). . . .” 20 C.F.R. §§ 404.1520c(a),
 2 416.920c(a). Instead, ALJ’s must consider every medical opinion or prior administrative medical
 3 findings in the record and evaluate each opinion’s persuasiveness using the factors listed. *See* 20
 4 C.F.R. § 404.1520c(a), 416.920c(a). The two most important factors are the opinion’s
 5 “supportability” and “consistency.” *Id.* ALJs must explain “how [they] considered the
 6 supportability and consistency factors for a medical source’s medical opinions or prior
 7 administrative medical findings in [their] . . . decision.” 20 C.F.R. §§ 20 C.F.R. 404.1520c(b)(2),
 8 416.920c(b)(2). “Supportability means the extent to which a medical source supports the medical
 9 opinion by explaining the ‘relevant . . . objective medical evidence.’” *Woods v. Kijakazi*, 32
 10 F.4th 785, 791-2 (9th Cir. 2022) (citing 20 C.F.R. § 404.1520c(c)(1)); *see also* § 416.920c(c)(1).
 11 “Consistency means the extent to which a medical opinion is ‘consistent . . . with the evidence
 12 from other medical sources and nonmedical sources in the claim.’” *Woods*, 32 F.4th at 792
 13 (citing 20 C.F.R. § 404.1520c(c)(2)); *see also* § 416.920c(c)(2).

14 B. *Medical Opinion Evidence*³

15 On August 17, 2008, Dr. Kester, a state agency physician, found Plaintiff had medically
 16 determinable impairments of depressive disorder and anxiety and obsessive-compulsive
 17 disorders. AR 130. He opined Plaintiff was moderately limited in his ability to: understand and
 18 remember detailed instructions; carry out detailed instructions; maintain attention and
 19 concentration for extended periods; perform activities within a schedule, maintain regular
 20 attendance, and be punctual within customary tolerances; sustain an ordinary routine without
 21 special supervision; work in coordination with or in proximity to others without being distracted
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23 ³ In the briefing, the parties combine the discussion of the ALJ’s reasons for finding Mr. Lease’s, Dr.
 24 Kester’s, and Dr. Beaty’s opinions unpersuasive. *See* Dkts. 10-12. As the ALJ provided nearly identical reasons for
 discounting these three opinions, the Court will also consider the opinions and ALJ’s findings together.

1 by them; and complete a normal workday and workweek without interruptions from symptoms
2 and perform at a consistent pace without an unreasonable number and length of rest periods. AR
3 116-17. He also found Plaintiff moderately limited in his ability to interact appropriately with the
4 general public and respond appropriately to changes in the work setting. AR 117. On February 6,
5 2019, Dr. Beaty affirmed Dr. Kester's opinion. AR 134-36.

6 On December 30, 2021, Mr. Lease, Plaintiff's licensed mental health counselor,
7 completed a Mental Impairment Questionnaire. AR 1414-18. Mr. Lease stated Plaintiff suffers
8 from post-traumatic stress disorder ("PTSD") and a traumatic brain injury with frequent seizures
9 despite daily medication. AR 1414. Mr. Lease opined Plaintiff is unable to meet competitive
10 standards in working in coordination with or proximity to others without being unduly distracted,
11 getting along with co-workers or peers without unduly distracting them or exhibiting behavioral
12 extremes, and dealing with normal stress. AR 1416. He found Plaintiff seriously limited in
13 completing a normal workday and workweek without interruptions from psychologically based
14 symptoms, accepting instructions and responding appropriately to criticism from supervisors,
15 and responding appropriately to changes in a routine work setting. AR 1416. He found Plaintiff
16 limited, but satisfactory, in all other areas of mental abilities and aptitudes needed to do unskilled
17 work. *Id.* Mr. Lease opined Plaintiff is moderately limited in understanding, remembering, or
18 applying information; markedly limited in interacting with others, in maintaining concentration,
19 persistence, or pace, and in his interpersonal relationships; and extremely limited in adapting or
20 managing oneself. AR 1417-18. Mr. Lease determined Plaintiff would be absent from work more
21 than four days per month. AR 1417.

22 *C. ALJ Decision*

23 The ALJ discussed Drs. Kester's and Beaty's opinions and stated,
24

1 I find the opinions of Dr. Kester and Dr. Beaty not persuasive. The doctors are
2 knowledgeable with the Social Security Administration disability program and had
3 opportunities to examine the claimant's medical records in providing their
4 opinions. However, their opinions are mostly inconsistent with the overall medical
5 evidence of record. Notably, their opinions regarding the claimant's limitations
6 with understanding, remembering, or applying information, as well as
7 concentrating, persisting, or maintaining pace, are not consistent with the record.
8 Their opinions are inconsistent with medical evidence showing that the claimant's
9 mental health symptoms improved with therapy, stable housing, and compliance
10 with anti-seizure medication. Their opinions are also inconsistent with the
11 claimant's ability to manage his mental health conditions without any medications.
12 In addition, their opinions are inconsistent with the claimant's performances during
13 neurology appointments. Of note, the claimant did not exhibit any notable cognitive
14 difficulties during these treatment visits. Moreover, their opinions are inconsistent
15 with the claimant's demonstrated activities in his personal life. He is able to manage
16 self-care, cook, perform household chores, use public transportation, shop, and
17 perform odd jobs for his mother and elderly roommate. He is also able to take care
18 of his children and spend time with others. This evidence greatly indicates that his
19 mental health symptoms are not as debilitating as alleged.

20 AR 818-19.

21 Later in his decision, the ALJ discussed Mr. Lease's opinion and found,

22 . . . Mr. Lease's opinion not persuasive. He had a chance to observe the claimant in
23 providing an opinion. However, his opinion is inconsistent with the overall medical
24 evidence of record. As a preliminary matter, the evidence suggests that the claimant
does not view his mental health conditions as limiting his ability to work. In
addition, his opinion is inconsistent with medical evidence showing that the
claimant's mental health symptoms improved with therapy, stable housing, and
compliance with anti-seizure medication. His opinion is also inconsistent with the
claimant's ability to manage his mental health conditions without any medications.
Moreover, his opinion is inconsistent with the claimant's performances during
neurology appointments. Of note, the claimant did not exhibit any notable cognitive
difficulties during these treatment visits. Further, his opinion is inconsistent with
the claimant's demonstrated activities in his personal life. He is able to manage self-
care, cook, perform household chores, use public transportation, shop, and perform
odd jobs for his mother and elderly roommate. He is also able to take care of his
children and spend time with others. This evidence greatly indicates that his mental
health symptoms are not as debilitating as reflected in his assessment. Finally, his
opinion regarding the claimant's frequent seizures is not consistent with medical
evidence showing that his condition is controlled well when he is compliant with
his medication regimen.

AR 821.

1 D. *Analysis of the ALJ Opinion*

2 The Commissioner argues only that the ALJ reasonably found the three opinions
 3 unpersuasive because the opinions were inconsistent with (1) Plaintiff's activities of daily living
 4 ("ADLs"); (2) the medical evidence; (3) Plaintiff's ability to manage his mental health
 5 conditions without medication; and (4) Plaintiff's performances during neurology appointments.
 6 Dkt. 11. The Court finds the Commissioner's failure to present argument as to additional reasons
 7 the ALJ may have provided for discounting Mr. Lease's opinion is a concession that any
 8 additional reason for finding Mr. Lease's opinion unpersuasive is not legally sufficient or
 9 supported by substantial evidence. Therefore, in determining if the ALJ erred in his
 10 consideration of Mr. Lease's, Dr. Kester's, and Dr. Beaty's opinions, the Court will only discuss
 11 the four reasons argued by the Commissioner.

12 First, the ALJ found Mr. Lease's, Dr. Kester's, and Dr. Beaty's opinions unpersuasive
 13 because the opinions were inconsistent with Plaintiff's ADLs. AR 819, 821. A medical opinion
 14 can be undermined by a claimant's reported activities if supported by substantial evidence. *Ford*
 15 *v. Saul*, 950 F.3d 1141, 1155 (9th Cir. 2020). Yet, disability claimants should not be penalized
 16 for attempting to lead normal lives in the face of their limitations. *See Reddick v. Chater*, 157
 17 F.3d 715, 722 (9th Cir. 1998) (citing *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987)
 18 (claimant need not "vegetate in a dark room" in order to be deemed eligible for benefits)). Here,
 19 as stated above, the ALJ found Plaintiff's ability to manage self-care, perform household chores,
 20 use public transportation, shop, perform odd jobs for his mother and roommate, care for his
 21 children, and spend time with others evidences his mental health symptoms are not as
 22 debilitating as opined. AR 819, 821. The ALJ failed to explain how Plaintiff's activities were
 23 inconsistent with Mr. Lease's, Dr. Kester's, and Dr. Beaty's opinions. For example, it is unclear
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1 how Plaintiff's ability to use public transportation is inconsistent with Drs. Kester's and Beaty's
2 opinion that Plaintiff was not significantly limited in his ability to travel in unfamiliar places and
3 use public transportation. *See* AR 136. Nor is it clear how Plaintiff's ability to cook simple meals
4 (make sandwiches and T.V. dinners), visit with friends, or spend time with his children is
5 inconsistent with the opinions. Mr. Lease specifically noted Plaintiff had heightened anxiety
6 when his is not in a safe place and is around strangers. *See* AR 1414. The Court finds the ALJ
7 has not adequately shown Plaintiff's ADLs are inconsistent with the three opinions. Therefore,
8 the Court finds substantial evidence does not support finding Mr. Lease's, Dr. Kester's, and Dr.
9 Beaty's opinions are inconsistent with Plaintiff's ADLs.

10 Second, the ALJ found Mr. Lease's, Dr. Kester's, and Dr. Beaty's opinions were
11 inconsistent with the medical evidence. AR 818-19, 821. The ALJ measures the persuasiveness
12 of a medical opinion by considering how consistent that medical opinion is with the evidence
13 from other medical sources and nonmedical sources in the claim. *See* 20 C.F.R.
14 §§404.1520(c)(2), 416.920(c)(2). Here, the ALJ stated the opinions were inconsistent with
15 medical records showing Plaintiff's symptoms improved with therapy, stable housing, and
16 compliance with seizure medication. AR 819, 821. The ALJ did not cite to any medical records
17 to support this finding and did not provide an explanation as to why some symptom
18 improvement was inconsistent with limitations in some functional areas as opined to by Mr.
19 Lease and Drs. Kester and Beaty. *Id.*; *see also* AR 116-17, 134-36, 1414-18. Moreover, medical
20 records cited in earlier portions of the ALJ decision do not support the ALJ's conclusion. For
21 example, treatment notes show Plaintiff reported doing somewhat better, but he also reported
22 things were "pretty much the same" and that he still has difficulties around people. *See* AR 616.
23 He also reported that he was not having seizures because he had been taking his medication and
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1 that he was doing well with his anxiety because he was not leaving home. *See* AR 1242. As the
2 ALJ failed to adequately explain what medical records are inconsistent with Mr. Lease's, Dr.
3 Kester's, and Dr. Beaty's opinions and as it does not appear the medical records are inconsistent
4 with the opinions, the ALJ erred in finding Mr. Lease's, Dr. Kester's, and Dr. Beaty's opinions
5 are inconsistent with the medical records.

6 Third, the ALJ determined Mr. Lease's, Dr. Kester's, and Dr. Beaty's opinions were
7 unpersuasive because Plaintiff was able to manage his mental health conditions without
8 medications. AR 819, 821. In discussing the three opinions, the ALJ did not provide any
9 explanation or record citations. *Id.* However, earlier in his decision, the ALJ noted Plaintiff did
10 not take medications despite recommendations by his neurologist to take a mood stabilizer and
11 noted Plaintiff was able to manage his mental health symptoms with cannabis use. AR 816.
12 These two findings are inconsistent. Further, the record shows Plaintiff was prescribed mental
13 health medications, but one made his mood worse. *See* AR 544. Additionally, the record citations
14 provided by the ALJ in an earlier portion of his decision do not support a finding that Plaintiff's
15 cannabis use is effectively managing his mental health symptoms. *See* AR 816 (citing AR 515,
16 573, 1145, 1163, 1172, 1197, 1287). The cited records show Plaintiff uses marijuana and
17 occasionally reported that it helps him calm down, but there is no indication his mental health
18 symptoms are "managed effectively" by his marijuana use *See* AR 515, 573, 1145, 1163, 1172,
19 1197, 1287. The Court concludes the ALJ's third reason for discounting Mr. Lease's, Dr.
20 Kester's, and Dr. Beaty's opinions is not supported by substantial evidence. *See Regennitter v.*
21 *Comm'r of Soc. Sec. Admin.*, 166 F.3d 1294, 1299–300 (9th Cir. 1999) (internal quotations
22 omitted) ("we have particularly criticized the use of a lack of treatment to reject mental
23 complaints both because mental illness is notoriously underreported and because it is a
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1 questionable practice to chastise one with a mental impairment for the exercise of poor judgment
2 in seeking rehabilitation”).

3 Finally, the ALJ found Mr. Lease’s, Dr. Kester’s, and Dr. Beaty’s opinions unpersuasive
4 because the opinions were inconsistent with Plaintiff’s performances during neurology
5 appointments. AR 819, 821. The ALJ stated that Plaintiff did not exhibit any cognitive
6 difficulties during the neurology treatment visits. *Id.* It is unclear what portions of the neurology
7 treatments the ALJ is referencing. The ALJ also fails to explain why a lack of cognitive
8 difficulties is inconsistent with Mr. Lease’s, Dr. Kester’s, and Dr. Beaty’s opinions related to
9 Plaintiff’s limitations as a result of PTSD, depressive disorder, and anxiety and obsessive-
10 compulsive disorders. *Id.*; *see also* AR 112, 130, 1414. For these reasons, the Court finds the
11 ALJ’s fourth reason for finding Mr. Lease’s, Dr. Kester’s, and Dr. Beaty’s opinions unpersuasive
12 is not sufficient. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (“the agency
13 [must] set forth the reasoning behind its decisions in a way that allows for meaningful review”).

14 For the above stated reasons, the ALJ failed to provide a legally sufficient reason for
15 finding Mr. Lease’s, Dr. Kester’s, and Dr. Beaty’s opinions unpersuasive. Therefore, the ALJ
16 erred.

17 E. *Harmless Error*

18 “[H]armless error principles apply in the Social Security context.” *Molina v. Astrue*, 674
19 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless, however, only if it is non-prejudicial to
20 the claimant or “inconsequential” to the ALJ’s “ultimate nondisability determination.” *Stout v.*
21 *Commissioner, Social Security Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see Molina*, 674
22 F.3d at 1115. The Ninth Circuit has stated ““a reviewing court cannot consider an error harmless
23 unless it can confidently conclude that no reasonable ALJ, when fully crediting the testimony,
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could have reached a different disability determination.” *Marsh v. Colvin*, 792 F.3d 1170, 1173 (9th Cir. 2015) (quoting *Stout*, 454 F.3d at 1055-56). The determination as to whether an error is harmless requires a “case-specific application of judgment” by the reviewing court, based on an examination of the record made “‘without regard to errors’ that do not affect the parties’ ‘substantial rights.’” *Molina*, 674 F.3d at 1118-1119 (quoting *Shinseki v. Sanders*, 556 U.S. 396, 407 (2009) (quoting 28 U.S.C. § 2111)).

Had the ALJ properly considered Mr. Lease’s, Dr. Kester’s, and Dr. Beaty’s opinions, he may have included additional limitations in the RFC. For example, Drs. Kester and Beaty noted Plaintiff was capable of performing 1-3 step instructions with occasional lapses in concentration, persistence, and pace. *See* AR 135. And, Mr. Lease found Plaintiff would miss more than four days of work per month as a result of his impairments. AR 1417. The ALJ did not include these limitations in the RFC. *See* AR 811-12. The ultimate disability determination may change if limitations opined to by Mr. Lease and Drs. Kester and Beaty are included in the RFC and considered throughout the remaining steps of the sequential evaluation process. Accordingly, the ALJ’s error is not harmless and requires reversal.

IV. Conclusion

Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded Plaintiff was not disabled. Accordingly, the Commissioner’s decision to deny benefits is reversed and this matter is remanded for further administrative proceedings in accordance with the findings contained herein.

Dated this 2nd day of February, 2023.



David W. Christel
United States Magistrate Judge